



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 11, 1990

Mr. Alexander J. Gonzales
Acting Commissioner of Insurance
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

OR90-486

Dear Mr. Gonzales:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10425.

The State Board of Insurance (the board) received an open records request for, inter alia, "correspondence between [the board] and the Pension and Welfare Benefits Administration since January 1, 1990," and a list of multiple employer welfare arrangements (MEWA) compiled by the board. You contend that this information comes under the protection of sections 3(a)(3) and 3(a)(8) of the Open Records Act.

Your request regarding a letter from the Pension and Welfare Benefits Administration is governed by Open Records Decision No. 561 (1990), a copy of which is enclosed. Where a federal agency shares information with a governmental body in Texas pursuant to a policy affording the governmental body greater access to the information than that afforded to the general public, section 3(a)(1) of the Open Records Act will except such information from public disclosure if the information is confidential in the hands of the federal agency under federal law. The information contained in the letter in question is clearly deemed confidential when it is in the custody of the federal agency that provided the information to the board. See 5 U.S.C. § 552(b)(7). You must therefore withhold this letter in its entirety pursuant to section 3(a)(1).

With regard to the board's list of MEWAs, you state:

The list generated by [the board] includes cases that are under administrative

investigation and/or that have been referred to the Attorney General's office for prosecution. This list is therefore directly related to anticipated litigation to which this agency will be a party.

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Because MEWAs often involve fraudulent practices and may dissolve rapidly in the face of an investigation, it is important that suspect MEWAs not be aware of investigations prematurely.

You indicate that the list is comprised solely of those MEWAs that are or have been under investigation by the board and that the revelation of the status of pending investigations could hamper those investigations.

You state that you have released to the requestor only the names of the MEWAs whose cases have been adjudicated. We note that the list also contains the names of MEWAs that are currently in litigation; this type of information is currently available to the public, i.e. on court dockets, and therefore does not come under the protection of section 3(a)(3). You may, however, withhold the remaining names of MEWAs pursuant to section 3(a)(3).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-486.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/RWP/le

Ref.: ID# 10425
ID# 10467

Enclosures: Open Records Decision No. 561

cc: Pat Barnhard
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